

AMENDED IN SENATE APRIL 16, 2001

SENATE BILL

No. 312

Introduced by Senator Alpert

February 20, 2001

An act to amend ~~Section 30178.1 of Sections 30005.5, 30123, 30177, and 30178.2 of, and to add Section 30176.2 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 312, as amended, Alpert. Cigarette and tobacco products taxes: ~~refunds returned products.~~

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes ~~or tobacco products~~ at specified rates. ~~That law requires that any application for a refund based upon the exportation of tax-paid tobacco products be filed within a specified time period.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~ For purposes of that law, "untaxed tobacco product" is defined as any tobacco product that has not yet been distributed in a manner that results in a tax liability.

This bill would include as an "untaxed tobacco product" any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor claimed a deduction, refund, or credit.

The Tobacco Tax and Health Protection Act of 1988 (Proposition 99), which was adopted by the voters at the general election held on November 8, 1988, imposes a surtax on the distribution of cigarettes in addition to the tax imposed pursuant to the Cigarette Tax Law as of the effective date of the adoption of Proposition 99, and imposes a tax on

the distribution of certain tobacco products at an equivalent total rate determined pursuant to specified criteria.

This bill would provide that the wholesale cost used to calculate the amount of that tax does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period the tobacco products were distributed and the distributor refunds the amount paid in cash or credit.

The bill would also make changes with respect to refunds and credits, related to the other provisions of this bill.

The Tobacco Tax and Health Protection Act of 1988, an initiative measure, and the California Children and Families Act of 1998, another initiative measure, require that amendments to their provisions be consistent with the act's purposes, and require either a $\frac{4}{5}$ or $\frac{2}{3}$ vote of both houses of the Legislature.

This bill would declare that it amends those measures in a manner that furthers and is consistent with the purposes of those measures, and that it would require a $\frac{4}{5}$ vote for passage.

This bill would take effect immediately as a tax levy.

*Vote: ~~majority~~ $\frac{4}{5}$. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.*

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 30178.1 of the Revenue and Taxation~~
- 2 SECTION 1. Section 30005.5 of the Revenue and Taxation
- 3 Code is amended to read:
- 4 30005.5. "Untaxed tobacco product" means ~~any~~ either of the
- 5 following:
- 6 (a) Any tobacco product ~~which~~ that has not yet been distributed
- 7 in a manner that results in a tax liability under this part.
- 8 (b) Any tobacco product that was distributed in a manner that
- 9 resulted in a tax liability under this part, but that was returned to
- 10 the distributor after the tax was paid and for which the distributor
- 11 has either claimed a deduction pursuant to subdivision (c) of
- 12 Section 30123, or a refund or credit pursuant to Section 30176.2
- 13 or Section 30178.2.
- 14 SEC. 2. Section 30123 of the Revenue and Taxation Code is
- 15 amended to read:
- 16 30123. (a) In addition to the tax imposed upon the
- 17 distribution of cigarettes by this chapter, there shall be imposed

upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed.

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.

(c) *The wholesale cost used to calculate the amount of tax due does not include the wholesale cost of tobacco products, that were returned by a customer during the same reporting period the tobacco products were distributed, and the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.*

SEC. 3. Section 30176.2 is added to the Revenue and Taxation Code, to read:

30176.2. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 that is paid on the distribution of tobacco products that were returned by a customer, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 4. Section 30177 of the Revenue and Taxation Code is amended to read:

1 30177. The board shall, pursuant to regulations prescribed by
2 it, refund or credit to a distributor the denominated values, less the
3 discount given on their purchase, of stamps or meter impressions
4 affixed to packages of cigarettes, ~~and the tax imposed on tobacco~~
5 ~~products that has been paid on the distribution of tobacco products,~~
6 which have prior to distribution become unfit for use, unsalable or
7 have been destroyed, or which after distribution have become unfit
8 for use or unsalable and have been returned for credit or have been
9 replaced, and the board has proof of that return or destruction.

10 *SEC. 5. Section 30178.2 of the Revenue and Taxation Code is*
11 *amended to read:*

12 30178.2. In lieu of the refund of the tax on tobacco products
13 pursuant to Section 30176.1 or Section 30176.2, a distributor
14 eligible for that refund may elect to claim a credit against taxes
15 imposed pursuant to this part equal to the amount which would
16 have been refunded if a claim had been made pursuant to Section
17 30176.1 or Section 30176.2.

18 *SEC. 6. The Legislature finds and declares that this act*
19 *further and is consistent with the purposes expressed in Article 2*
20 *(commencing with Section 30121) of Chapter 2 of Part 13 of*
21 *Division 2 of the Revenue and Taxation Code, as contained within*
22 *the Tobacco Tax and Health Protection Act of 1988 (Proposition*
23 *99 of the November 8, 1988, general election), and Article 3*
24 *(commencing with Section 30131) of Chapter 2 of Part 13 of*
25 *Division 2 of the Revenue and Taxation Code, as contained in the*
26 *California Families and Children Act of 1998 (Proposition 10 of*
27 *the November 3, 1998, general election).*

28 *SEC. 7. This act provides for a tax levy within the meaning of*
29 *Article IV of the Constitution and shall go into immediate effect.*
30 *Code is amended to read:*

31 ~~30178.1.—Any application for a refund under Section 30176.1~~
32 ~~based upon the exportation of tax-paid tobacco products from this~~
33 ~~state shall be filed with the board no more than three months after~~
34 ~~the close of the calendar month in which the tobacco products are~~
35 ~~exported.—~~